IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6838 OF 2006

1. Thakare Vishnu Namdeorao
   C/o. Suresh Medical, Opp. Head Post
   Office, Civil Line, Akola.

2. Gopal Govind Kadam, age 24 years,
   Gavand Compound, Tembipada,
   Bhandup (West), Mumbai - 78.

3. Govind Sudhakar Khairnar,
   age 22 years, M.H.B. Colony,
   R.No.1242, Satpur Colony, Nashik.

4. Roshan Vijay Tiwari,
   Age 23 years, 20, Mayureshwar,
   Shri Krishna Nagar, Satpur Colony,
   Nashik-7.

5. Sandip P. Godse, Age 22 years,
   1469, Kolwadi Road, Niphad-33.

6. Kulthe Sushant Suryakant,
   Age 23 years, Sarawati Nagar, Citric
   Panchak, Jail Road, Nashik Road,
   Nashik - 101

7. Shinde Rajendra Dattatray, age 22
   years, At post: Sonari, Tal.Sinnar
   Dist : Nashik - 103. .. Petitioners

Versus

1. State of Maharashtra
   Through Chief Secretary,
   Mantralaya, Mumbai - 400 032.

2. The Principal Secretary,
   Department of Higher & Technical
   Education, Maharashtra State,Mumbai

3. The Director,
   The Directorate of Technical
   Education, 3, Mahapalika Marg,
   Mumbai.

4. Pravesh Niyantrayan & Shikshan
   Shulka Samitee through its Office

Secretary, Govt. Polytechnic Bldg;]
A.Jung Marg, Bandra(E), Mumbai.]

5. Maharashtra Association of Pharmacy]
College Principal and College]
Organisations (MAPPCO) through its]
President - Dr. K.N. Gujar,]
S.No.9/2, Karve Nagar, Canal Road]
Lane - 2, Pune - 411 052.]
and also at C/o.Sinhgad Institute]
Of Pharmacy, S.No.19/1, Off.Western]
Bypass, Pune - Mumbai Express Way,]
Narhe (Ambegaon), Pune - 411041.] ..Respondents

Mr. Madhav Jamdar for the petitioners.

Mr. A.A. Kumbhakoni, Associate Advocate General with Mrs. S.S. Bhende, AGP, for the respondents No.1 to 3.

Ms. Deepa Chavan with Ms. Rekha Panchal for respondent No.4.

Mr. C.J. Sawant, senior counsel with Mr. Nitin Dhumal for the respondent No.5.

CORAM: S.B. MHASE, &
R.S. MOHITE, JJ.

DATED: 19TH APRIL, 2007

ORAL ORDER : [Per R.S. Mohite, J.]

1. Rule. By consent, Rule made returnable forthwith.

2. This Petition has been filed by the students of Pharmacy studying in various Pharmacy Colleges in the State of Maharashtra impugning the fees fixed as mentioned in the chart published by the Department of

Technical Education on their website on 5th October, 2006. A perusal of the impugned chart which is at Exhibit-K to the Petition indicates that the fees as fixed by the Director of Technical Education were in respect of 22 Pharmacy Colleges and the fees per term was fixed either at Rs.1,00,000/- or at Rs.1,25,000/-, depending on the College. As per the orders passed by the Apex Court in the case of **Islamic Academy of Education & Anr. Vs. State of Karnataka & Ors. - (2003) 6 SCC, 697** and in **P.A. Inamdar Vs. State of Maharashtra - (2005) 6 SCC, 537**, the fixation of fees was required to be done after hearing the affected Colleges by a Special Committee which, in Maharashtra, is known as the "Shikshan Shulka Samitee".

3. From the Affidavit dated 17th April, 2007 filed on behalf of the Shikshan Shulka Samitee, it appears that the question of admission into Pharmacy Colleges in Maharashtra became the subject matter of a Public Interest Litigation bearing No.98 of 2006. On 25th September, 2006, the Maharashtra Association of Pharmacy Colleges, which claims to have 24 members, out of which 3 are minority colleges, informed the Pravesh Niyantran Samitee, which is the other Samitee dealing with the question of admissions, that it was not possible for them to conduct the Common Entrance Test.

In view of this declared inability on the part of the Maharashtra Association of Pharmacy Colleges, the Pravesh Niyantran Samitee directed the Directorate of Technical Education to undertake the admission process and this direction was given on 26th September, 2006. Thereupon, the Directorate of Technical Education fixed fees as mentioned in para (2) hereinabove.

4. This Petition thus came to be filed on 11th October, 2006, impugning the fees as fixed by the Department of Technical Education on the footing that the said fixation had not been done by the Committee appointed in accordance with the direction of the Apex Court in **Islamic Academy** (supra).

5. It appears that immediately after the filing of this Petition, the Shikshan Shulka Samitee had fixed a meeting on 12th October, 2006. By the date of this meeting, only one Pharmacy College from Nagpur had filed the necessary documents required for fixation of fees. This College had submitted the documents on 17th August, 2006 and in respect of the said College, the fees had already been fixed on 28th August, 2006, as Rs.71,000/- per annum. The other Pharmacy Colleges had chosen not to furnish any documents to the Shikshan Shulka Samitee. Faced with a situation where admissions had already

commenced on 4th October, 2006, and the question of fixation of fees could not be delayed any further as also the fact that this Petition was filed in this Court, the Shikshan Shulka Samitee treated the matter as urgent and fixed a two tier fees as follows: (a) for non-sponsored students Rs.60,000/- per year and (b) for sponsored students Rs.90,000/- per year.

6. After the fixation of the fees by the Shikshan Shulka Samitee as aforesaid, the petitioners amended the Petition and sought refund of the excess fees collected from them. Their prayer was that the fees should be collected in accordance with the quantum as fixed by the Shikshan Shulka Samitee.

7. Now, we have heard all the parties concerned. On behalf of the respondent No.5 i.e. Maharashtra Association of Pharmacy Colleges it was contended that the fixation of fees by the Shikshan Shulka Committee was in violation of the directions given by the Apex Court insofar as no hearing was given to the concerned affected Colleges. It was sought to be contended that the question, modality and procedure for granting admission to the students in Pharmacy Colleges was under a cloud and the matter was subjudice before this Court and, in such circumstances, the necessary details for

fixation of the fees could not be given and the schedule as specified by the Apex Court in the case of **Islamic Academy** (supra) could not be followed. We cannot accept this explanation. Even assuming that the question of admission procedures to be adopted for admitting students into Pharmacy Colleges was subjudice before this Court that by itself had no direct nexus with the question of fixation of the fees as the concerned Colleges which had with them the expenses incurred on the infrastructure etc. could have and ought to have forwarded all these documents to the Shikshan Shulka Samitee and ought to have approached the Shikshan Shulka Samitee well in time so that the fees as finally fixed by the Shikshan Shulka Samitee could have been quoted in the prospectus. This has not been done. Instead, it appears that the Directorate of Technical Education, which is supposed to fix the fees, proceeded to fix the fees on a basis which has not been revealed to this Court. We feel that the said fixation has been done without proper authority of law, particularly in the backdrop of the directions given by the Apex Court in the case of **Islamic Academy** (supra).

8. At the same time in the absence of any material it appears that the Shikshan Shulka Samitee bonafidely fixed the fees as they thought reasonable.

It does appear that the Shikshan Shulka Samitee was faced with a very difficult situation where there were representations from students, the admission process had already started and the Colleges had failed in their duty to submit all necessary particulars before them.

9. From the aforesaid Affidavit of the Shikshan Shulka Samitee it is further evident that after their decision dated 12th October, 2006, fixing the fees as aforesaid, 13 more Colleges have now furnished information required for fixation of fees. 10 other Colleges including 3 minority Colleges have yet not submitted the required information. In realisation of the fact that the fees fixed by the Shikshan Shulka Samitee was without any information and without hearing the affected Colleges, a fair statement is made on behalf of the Shikshan Shulka Samitee that on the basis of the information already received by them from 13 more Colleges and on the basis of the information which may be furnished by any other College within a period of one week from today, they will re-consider the question of fixation of fees on the basis of the material before the Samitee after hearing the affected Colleges and for the Academic Year 2006-2007. The statement made is accepted and in the circumstances, the following directions are given:

(a) That the Pharmacy Colleges in the State of Maharashtra who are the Members of respondent No.5 and who have till date not furnished the material for fixation of the fees to the Shikshan Shulka Samitee are given one week's time to do so and within a period of one week, they are directed to furnish all such material as they would like to rely upon for fixation of the fees to the Shikshan Shulka Samitee.

(b) If any College fails to furnish material to the Shikshan Shulka Samitee as per direction (a) above, then the fees as fixed by the Shikshan Shulka Samitee vide their decision dated 12th October, 2006 will be binding upon them and they will not be entitled to charge more fees than the declared fees as decided by the Shikshan Shulka Samitee on 12th October, 2006.

(c) That it will be the responsibility of the respondent No.5 to inform about this order to all its Members including those Colleges which have so far not furnished

information/material to the Shikshan Shulka Samitee.

(d) That after a period of two weeks, the Shikshan Shulka Samitee will hear the concerned Colleges which have furnished the information and any such party as it feels necessary and decide the fees in respect of the individual Colleges, as expeditiously as possible. The fees so fixed will be applicable for the Academic Year 2006-2007.

(e) All the Pharmacy Colleges are directed to refund the difference of fees between the fees as fixed by the Directorate of Technical Education and the fees as fixed by the Shikshan Shulka Samitee in its meeting dated 12th October, 2006, if not already refunded. The process of refund should commence forthwith. Respondent No.5 is directed to communicate the requirement of refunding this difference to all its 24 Members forthwith. The process of refund should be completed within a period of two weeks from today.

(f) After the Shikshan Shulka Samitee

fixes the fees in respect of each individual Pharmacy College in the State of Maharashtra, if the fess so fixed is more than what has already been collected from the student, then the College will be entitled to ask the student to pay the additional fees within a reasonable time which shall not be less than two weeks from the date of communication of demand to the student. If, however, the fees fixed by the Shikshan Shulka Samitee is less than what has already been paid by the student then the concerned College will also be liable to make further refund to the concerned student. This refund, if any, will also be completed within a period of two weeks from the date when the decision of the Shikshan Shulka Samitee is communicated to the respective Colleges.

10. Rule is made absolute in the aforesaid terms.

. All parties to act on an authenticated copy of this order. Certified copy expedited.

Sd/- Sd/-

[R.S. MOHITE, J.] **[S.B. MHASE, J.]**